

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 1:96cr227
)	
KURT SHAWN HANEIPH,)	
)	
Defendant.)	

**GOVERNMENT’S RESPONSE IN OPPOSITION TO
DEFENDANT’S *PRO SE* MOTION FOR REDUCTION OF SENTENCE**

The United States of America by its attorneys, Chuck Rosenberg, United States Attorney for the Eastern District of Virginia, and W. Neil Hammerstrom, Jr., Assistant United States Attorney, hereby files this response in opposition to defendant Kurt Shawn Haneiph’s *pro se* motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2).¹ Because this Court sentenced defendant as a career offender under U.S.S.G. § 4B1.1, his guideline range is unaffected by Amendments 706 and 715, making him ineligible for relief under 18 U.S.C. § 3582(c)(2).

BACKGROUND

1. On August 5, 1996, defendant Kurt Shawn Haneiph was found guilty by a jury sitting in this Court on one count of conspiracy to distribute 50 grams or more of cocaine base, and two counts of distribution of five grams or more of cocaine base. In his presentence report, the defendant was described as “a manager and supervisor of a criminal conspiracy which involved more than 5 people.” He supplied crack cocaine and heroin to a large number of people and

¹ While defendant’s surname is spelled “Hanieph” in his *pro se* motion, his Presentence Report and Bureau of Prisons inmate records list his name as “Haneiph.”

employed an individual to serve as a broker to set up deals and provide a residence to store, package and sell the drugs. *See* Haneiph Presentence Report, pp. 9-10; ¶ 42.

2. The defendant's sentencing guidelines range was calculated at 360 months to life, with a criminal history category of VI. He was sentenced on November 15, 1996 as a "Career Offender"² (U.S.S.G. §4B1.1) to a term of imprisonment of 360 months.

ARGUMENT

Courts have overwhelmingly held that defendants sentenced as career offenders are ineligible for relief under the retroactive crack amendments. The Fourth Circuit has affirmed this point twice in unpublished opinions. *See, e.g., United States v. Gray*, 2008 WL 895012, *2 n.1 (4th Cir. Apr. 2, 2008) (unpublished); *United States v. Bronson*, 2008 WL 539796, *2 (4th Cir. Feb. 27, 2008) (unpublished). The Eighth Circuit has agreed in a published opinion. *See United States v. Tingle*, 2008 WL 1902055 (8th Cir. May 1, 2008) (per curiam). And many district courts have likewise concluded that career offenders are ineligible. *See, e.g., United States v. Biami*, 2008 WL 1869108 (E.D. Wis. Apr. 22, 2008) (collecting 17 opinions from district courts).

When a defendant was sentenced under the career offender guideline, drug quantity does not affect the guideline range and hence the defendant's sentencing range is not lowered by the retroactive crack amendments as required to grant relief under § 3582(c)(2).

² Haneiph's prior convictions for Attempted Murder 2 and Conspiracy to Possess with Intent to Distribute Cocaine placed him in this status. *See* Haneiph Presentence Report, p. 16; ¶ 57.

Accordingly, the defendant's *pro se* motion for reduction of sentence should be denied.

Respectfully submitted,

Chuck Rosenberg
United States Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of June, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed the document by U.S. mail to the following non-filing user:

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